

“Insurable Interest”
and
“Sole and Unconditional Ownership”

With Legal References.

Address by T. H. WILLIAMS
General Adjuster

At the Thirty-Fifth Annual Meeting of the Fire Underwriters' Association
of the Pacific, January 11, 1911.

SAN FRANCISCO, CAL.

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“Insurable Interest.”

With Legal References.

ADDRESS BY T. H. WILLIAMS,

AT THE THIRTY-FIFTH ANNUAL MEETING OF THE FIRE UNDERWRITERS'
ASSOCIATION OF THE PACIFIC, SAN FRANCISCO, CAL.,
JANUARY 11, 1911.

The object and intent of the fire insurance contract is to indemnify against or for actual loss under the policy occasioned by fire to the interest of the insured, but it does not cover speculative interest nor problematical losses. The claim must be for actual loss in money value, and no more.

All authorities agree that the contract is one of indemnity simply; that it appertains only to the person or party named in the policy and not to the thing insured; that it is not a contract running with the property, real or chattel, nor forming a subject of the insurance; that it is a personal contract; that it is an important requisite that the interest to be insured must be a legal and valid one, made according to law and which can be enforced; that it must be a clear, substantially vested pecuniary interest and not a mere expectancy without any vested right.

The clause in reference to the interest of the insured in the policy contract, California standard form, reads as follows:

“The company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of loss or damage.”

This clause is very clear and explicit and it should eliminate from your mind that the property is insured. It is simply the cash interest of the insured in the property. All fire insurance contracts contain a clause similar to the one just read. I quote the California form because it is more clearly expressed.

Civil Code Cal. 2,546, 2,588.

Lynch v. Dalzell, Ho. Lords 1,729; 3 Browns Par. Cases, 497; Abraham v. Ins. Co., U. S. C. C. Iowa. Saddlers v. Badcock, 2 Atkins R. 544; 1 Ins. Law Jour. 60 2 id 769; Richardson v. Rose, 21 U. C. C. P. 291; Quarles v. Clayton,

87 Tenn. 308; *Wilson v. Hill*, Mass., 66; *Disrow v. Jones*, Horr, (Mich.) Ch. 48 *Carpenter v. Prov.* Wash. 16 *Peters* (U. S.), 595. May Vol. 1, Page 6. *Mitchell v. Home* 32 Iowa 421, 424; Civ. Code Col. 2,588. See Clement 1 Page 18 for additional cases. See Joyce 2 Page 88 for additional cases. March Ins., 80; *Humphreys*, 176; *Milligan v. Eq. Ins. Co.*, 16 U. C. Q. B. 314; 1 *Philips Ins.* 106 and 186; 16 *Wind*. N. Y. 385; N. Y. Code 1,366-1,370; 32 Md. 421; 2 *Pick Mass.* 249; 23 *id* 413; 4 *Ins. Law Jour.* 737; Civ. Code L. C. 2,474. 2 *Pick.* 249 23 *id* 418; *Buck v. Cheaspeake Ins. Co* 1. *Pet* 151 at 163; Civil Code Cal. 2,549 and 2,552; 1 *Philips* 123, 214-215; 1 *Duer.* 315; 98 *Mass.* 288; 9 *Ins. Law Jour.* 13; Civil Code L. C. 2,501; *Stanisiss v. Hartford Ins. Co.* *Ins. Law Jour.* 625; *Ins. Cent. Dig.* 1,646 *Dec. Dig.* 646; Joyce 2, Page 896. 1 *Arnold Ins.* 722.

There are many classes of interest which are insurable, as you will see from the following:

Any one who is charged with the protection of property, or has a right to protect it, or will receive a benefit from its continued existence:

- Administators.
- Assignee.
- Bailee.
- Builder under contract.
- Common carriers.
- Commission merchant.
- Consignor.
- Consignee.
- Contractor.
- Creditor.
- Debtor.
- Executors.
- Factor.
- Grantor.
- Hirer.
- Endorser.
- Husband in wife's property.
- Husband in homestead.
- Life interest.
- Lessee.
- Lessor.
- Mortgagee.
- Mortgagor.

One having a lien for advances or otherwise.

One having a claim in the nature of a lien.

One having an equitable lien with possession.

One having an equitable interest.

One having possession under claim of title.

Part owner responsible for whole.

Profits.

Pledgee.

Pledgor.

Receiver.

Stockholder.

Surety.

Sheriff.

Tenant in common.

Trustee.

Vendee in possession.

Vendor before delivery or completion of sale.

Warehouse men.

The interest of the assured, however, must be stated in all cases in the policy.

As most of the above are well understood I will deal only with those which appear to be in dispute.

Installment Lease.

Pianos and furniture are sold under what is known as an installment plan lease. The title remains in the name of the seller and the purchaser has no title until the last payment is made. He has no right to sell the property, and therefore his only interest is the amount he has paid on the lease.

In order to cover both the interest of the seller and purchaser the policy should be made in both names.

Downs v. German Alliance Ins. Co. et al (Del. Sp. C.) 67 At. Rep. (Aug. 1907) 146. For additional decisions see page 10.

Installment Plan.

Pianos and furniture purchased on the installment plan, or on an open book account, the purchaser has the right to insure for full value in his own name, and to recover such value, but it is better to make the policy payable to the seller. For decisions, see page 10.

Real Property Purchased Under Contract.

The policy should recite that property is sold under contract and policy made in the names of all parties in interest; loss, if any, payable to seller or original owner of property. For decisions see page 12.

Mortgagee.

A very interesting case was recently decided by a supreme court relative to the interest of a mortgagee. A policy was issued to the owner, with loss, if any, payable to the mortgagee, using the New York standard mortgage clause. The mortgage was foreclosed by the mortgagee and he was given a sheriff's deed. The insurance policy was not assigned to the mortgagee. The property was destroyed by fire and the mortgagee, now owner in fee simple, made claim against the company. The court held that he could not recover under the policy, as his interest in the policy was payee-mortgagee only.

Barton Co-Operative Bank v. American Cent. Ins. Co. 38 Ins. Law Jour. 599 Ins. Cent. Dig. 815; Dec. Dig. 328.

Property Held on Storage or for Repair.

When liability is assumed by an insurance company for property held on storage or for repair it should be for a specific amount, otherwise the largest claim for damages is very apt to be on this item, and as fictitious values are nearly always given, a controversy is sure to arise. This is particularly true of jewelry stocks, laundries, tailor shops, and too much caution cannot be exercised by the companies.

The policy contract provides that the company is not liable for property held on storage or for repair, because it is not an insurable interest. For decisions see page 9.

Rents.

The owner of the building or the lessee has an insurable interest in the revenue from the property. The company is liable for the rents during the period it would take to repair the building. It would seem that a company would have the right to deduct the cost of collecting the rents and other expenses, but the courts have held that our form is a valued policy and that no deductions can be made.

Whitney v. Northern Ins. Co. Ins. Law Jour. 823. For additional decisions see pages 10 and 11.

Tenant's Improvements.

The improvement made by a tenant usually consists of wall and ceiling decorations, floor, store fronts and balconies. They are attached to the building and cannot be removed without injury to the building. Improvements that can be removed are fixtures. There is no more troublesome item than this to adjust, and in many cases it is paid for by the company insuring the building and also by the company covering the contents. If the same adjuster had both building and contents there would be little chance of double payment.

Improvements made by a tenant belong to the owner of the building, and therefore the interest of the tenant is the use of such improvements only. The value to the tenant becomes less each year.

To determine the loss, ascertain when improvements were made and how long the lease has to run, and then apportion the value for each year. For example: If the improvements cost \$500 and were made January 1, 1909, and the lease expires January 1, 1914, if a damage occurs January 1, 1910, the loss would be as follows: four-fifths of \$500, or \$400.

Tenant's improvements should be insured specifically, if at all, and the risk should be carefully inspected by a special agent before it is finally passed.

Lincoln Trust Co. et al. v. Nathan (St. Louis C. A.) 99 S. W. (8 Febr. 1907) 484. For additional decisions see page 13.

Life Interest.

A policy covering the life interest of the insured is intended to and does guarantee to protect the income from the property insured to an amount not exceeding that named in the contract. It does not contemplate rebuilding or replacing, or in fact, anything other than the loss of income to the insured, or for rent which might have to be paid during the life of the insured.

Griswold defines a tenant for life, or a life interest as follows: "Tenant for life has a freehold interest in lands, the duration of which is confined to the life of some person or persons, or the happening or not happening of some uncertain event. Such interest is insurable and its value in case of loss is to be estimated by the ordinary life tables."

To make it more clear, we will assume a policy was written for \$5,000, covering the life interest of the insured in a two-story building. A loss occurs and the building is completely destroyed. The value of

the building is ascertained to be \$7,500. The income at the time of the fire is \$35 per month. The insured is fifty years old, and according to the life tables would live twenty years more. The income for twenty years would be \$8,400. Taking that amount as our basis, the loss would be as follows:

Income for 20 years ($\$35 \times 12 \times 20$).....	\$8,400
Less probable repairs, vacancy, taxes and other expenses.	2,800
Insured's actual loss	\$5,600
Less 2 per cent discount for cash ($\$5,600 \times .02 \times 20$).....	2,240
Net loss	\$3,360

The 2 per cent discount is equal to 5 per cent interest, and is figured annually for twenty years, deductions being made each year. Taking the \$3,600 at 5 per cent interest, and deducting each year the net income will pay the insured the amount he would have received from the property, and at the end of twenty years the principal and interest are exhausted. This is all the insured can rightly claim, as he could not possibly receive more from the property, and therefore this is the value of his interest in the building at the time the loss occurs.

A life interest does not allow the insured to sell or dispose of the property in any way. Therefore, the only interest the insured has is the revenue receivable from the property during life.

Schaeffer v. Anchor Ins. Co. 110 N. W. (Febry. 1907) 470. For additional decisions see page 13.

Leasehold.

There are several kinds of leasehold interests, but I shall deal more particularly with the one which gives all improvements to the land owner at the expiration of the lease. It has been made clear that we must first determine what the cash value of the interest of the insured in the property is. At the expiration of the lease the buildings belong to the land owner. Therefore, the insured has no right of conveyance, nor can he dispose of the buildings in any way, and the only interest he can have in the property is the revenue from it.

You will note that a life interest and this class of leasehold interest are very similar, the only difference being that in the leasehold interest we have a definite and undisputable date when all interests of the insured ceases, and in the life interest the time when the interest of the insured ceases is found by life mortality table.

All leases recite that if the monthly rental is not paid for sixty days the lease is terminated. Also, if a fire occurs and renders the building untenable the lease is void. It is then clear that the only loss to the insured is his interest in the revenue from the building for the unexpired term of the lease. For example: A policy is issued for \$2,000 on a two-story building, it being understood that the building stands on leased ground. A fire damages the building \$1,500, or completely destroys it. The building cost \$3,000, and the lease had thirty-four months to run. The building is rented for \$45 per month and the insured has to pay a monthly rental of \$25 for the land. The proper method of figuring the loss would be to compute the rental from the date of the fire to the expiration of the lease. Then deduct the rent of the land for the same period, taxes, insurance, vacancy, ordinary repairs and interest or discount. For example:

Income for 34 months at \$45 per month.....	\$1,530	
Deduct for rent of land for same period (34×\$25.00). .	\$850	
Deduct for taxes and insurance	120	
Deduct for ordinary repairs	50	1,020
Actual loss to insured		510
Deduct interest for 34 months.....		30.60
Net loss of insured		\$479.40

The damage to the building does not enter into the loss unless it is less than the net income or loss to the insured. No lease requires the assured to repair the building if a fire has rendered it untenable, for the lease is then and there at an end. If repairs were made it would have to be with the consent of the land owner.

A settlement on the above basis is fair and equitable to all concerned. It would not be just from an insurance standpoint to consider the loss to be the damage to the building because the building does not belong to the insured. His interest is simply the revenue obtainable from the insured property and the actual loss to him is his loss of income from the property and that is the measure of damage.

If it were possible for the insured to sell the building then his interest would be the value of the building, less about 75 per cent, as a building is not worth over 25 per cent of its cost if it is to be moved, and this should be added to the net revenue from the building from the date of the fire to the expiration of the lease.

These risks are very undesirable even under the most favorable conditions. i. e., a very long lease, and therefore a definite mode of

settlement should be agreed upon. I understand some companies have paid the value of the building when the lease had but one year to run. This is a most excellent settlement for the insured, but it is a bad and dangerous precedent to establish. For decisions see Lessee, Lessor and Leasehold, page 11.

Since the first edition of this article, the court in the case of *Getchell v. Mercantile and Mfrs.' Ins. Co.* confirmed this method of computing Leasehold Interests.

The interest of the insured seems to be the subject of more controversy than any other clause in the policy, and the courts nearly always rule that it is a question for the jury, and yet it should have but one interpretation. The insurance company does not cover more than the actual cash interest of the insured, whatever that may be, and such interest must be plain and capable of proof, or he has no interest whatever.

REFERENCES:

ADMINISTRATOR; ADMINISTRATRIX; EXECUTOR; EXECUTRIX; GUARDIAN: Has the right to insure property for the benefit of the heirs. Policy should be made in his name as: "John Doe Administrator of the Estate of James Jones, deceased."

5 Conn. 19-20; Barb. N. Y. 91; Civ. Code L. C. 921.

Joyce 2-913.

Sheppard v. Ins. Co., 21 W. Va. 368; 12 Ins. L. J. 817; Globe Ins. Co. v. Boyle, 21 Ohio St. 119; Herkinson v. Rice, 27 N. Y. 163.

ASSIGNEE: He being responsible for the property may insure in his name for the benefit of others.

2 Summ. C. C. 345; 10 Paige Ch. N. Y.

BUILDER OR CONTRACTOR: Has an insurable interest to the amount of his lien on the property for material and labor.

Royal v. Stinson, 103 U. S. 25; 10 Ins. L. J., 687; Com. Ins. Co. v. Capitol City, 16 Ins. L. J. 81; Stout v. City Ins. Co., 12 Iowa 371; Longhurst v. Star Ins. Co., 19 Iowa 371; Carter v. Humboldt Ins. Co., 12 Iowa, 287; Franklin v. Coates, 14 Md. 285; Planters v. Thruston, 93 Ala. 255; 20 Ins. L. J. 746.

BUILDING PURCHASED UNDER CONTRACT: Purchaser has an insurable interest to the amount he has paid on contract.

Civ. Code Cal., 2,587; Davis v. Phoenix Ins. Co., 111 Cal. 409.

See vendee or vendor.

BAILEE: May insure the property in his name, if he agrees with the owner to be responsible in case of loss. Policy specially provides against liability of this sort and if it is assumed by a company, it should be for a specific amount. The law does not hold a Bailee, or a person with whom merchandise is left for storage or repair, responsible for safe keeping. See article page 4.

2, Kents Comm. 395-451; Cal. Ins. Co. v. Union Com. Co., 133 U. S. 387; 19 Ins. L. J. 385; Richmond v. Niagara Ins. Co., 79 N. Y. 230; Pelzer Mfg. Co. v. Sun, 36 S. C. 218, 153 S. E. 562.

CONSIGNEE: Has an insurable interest to the amount of his lien and he may also insure for full value if he is responsible to the consignor for the total value of the merchandise.

3 Mass. 133; 5 Mass. & W. 390; Phoenix Ins. Co. v. Herfolheimer, 109 N. W. Rep. (Nov. 1906).

CONTRACTOR: See Builder. See Liens for cases.

CONSIGNOR: Has right to insure for full value of goods where consignee has not insured for his benefit.

Joyce 2-930; Hibbert v. Carter, 1 Tenn. Rep. 744. See Factor.

CREDITOR: Has an insurable interest to the amount of his claim.

1 Philips Ins. 213; 14 Md. 285; Clark v. Scot. Imp. Ins. Co., 4 S. C. R. 192; Donnell v. Donnell, 86 Me. 518; 28 Ins. L. J. 371.

CONSTABLE: May insure property intrusted to him as: "Trustee for John Smith."

COMMISSION MERCHANT: Has an insurable interest to the amount of his commission and other liens. He may insure the full value if responsible for the return of the goods.

5 Hill N. Y. 227; Hough & Peoples Ins. Co., 26 Md. 398; Phoenix v. Parsons, 129 N. Y. 86; 29 N. E. Rep. 87.

COMMON CARRIER: Has an insurable interest to the amount of the transportation charges.

N. Y. Code 1,368; 1 Philips Ins. 166-220; Minn. St. P. & M. R. R. v. Ins. Co., 64 Minn. 61; 25 Ins. L. J. 252; Commonwealth v. Ins. Co., 122 Mass. 136; Cal. Ins. Co. v. Compress Co., 133 U. S. 387; 19 Ins. L. J. 385.

DEBTOR: Has a right to insure if he has any interest after payment of debt.

Eng. L. & Eq. 503; 13 Gray Mass. 431; 16 Ins. Law Jour. 227.

DEWISEE OR LEGATEE: Has an insurable interest only after death of testator.

1 Arnold Ins. 262; Angell Ins. 18; Cowper R. 588.

EXECUTOR: See Administrator.

EXECUTRIX: See Administrator.

FACTOR: Has an insurable interest for advances, expenses and commissions, and he can also insure goods for their full value, but policy must state his interest clearly.

Angill Ins. 497-510; 1 Arnold Ins. 145; Joyce 2-931; 623 and 624; Putnam v. Mercantile Ins. Co., 5 Met. (Mass.) 386; Russel v. Union Ins. Co., 1 Wash. C. C. 400; Rudolph v. Ware, 3 Cranch U. S. 503; also see Consignee.

GUARDIAN: Has the right to insure property in his name for the benefit of a minor as: "John Doe, Guardian of Mabel Jones."

1 Johns Ch. N. Y. 90.

HUSBAND IN WIFE'S PROPERTY: If separate property of wife he has no insurable interest; but if it is community property he has an insurable interest.

2 Joyce 1,049; Clark v. Dwg. House Ins. Co., 81 M. 373, 17 Atl. Rep. 303; Merritt v. Farmers Ins. Co., 42 Iowa 11; Aetna v. Resh., 40 Mich. 241; Jacobs v. Ins. Co., 52 S. C. 110, 29 S. E. 533; 27 Ins. L. J. 715; Horsch v. Ins. Co., 77 Wis. 4, 45 N. W. 945, 19 Ins. L. J. 993; Barracliff v. Ins. Co., 45 N. J. 543; 13 Ins. L. J. 190.

HUSBAND may insure property as Trustee of wife.

So. Mut. Ins. Co. v. Turnby, 100 Ga. 298; 27 Ins. L. J. 57.

HUSBAND has an insurable interest in building erected on his wife's land. Abbott v. Hampden Ins. Co., 30 Me. 414; Rohrbach v. Germania, 62 N. Y. 47; Continental v. Wingfield, 32 Tex. 194, 73 S. W. 847.

HOMESTEAD: Should be insured in the name of all parties in interest.

Reynolds v. Iowa Ins. Co., 80 Iowa 563, 46 N. W. 659.

INSTALLMENT LEASE: (Where title remains in Seller.) The purchaser has an insurable interest to the amount he has paid on the lease.

Mieball v. St. Louis Mut. F. & M. Ins. Co., 17 Mo. App. 23; Davis v. Phoenix Ins. Co. Ill. Col. 409; Westchester v. Weaver, 70 Md. 536; Kartlander v. Elston, 52 Fed. Rep. 180, 2 C. C. A. 557; Phoenix Ins. Co. v. Public Packs. Imp. Co., 63 Ark. 187; Ehrsam v. Phenix, 43 Neb. 554, 61 N. W. Rep. 899.

LIENS: One may insure property to the amount of his lien provided it is legal.

1 Mason 127; 3 id 255; 4 Ins. Law Jour. 741; Joyce 2-996; Protection Ins. Co. v. Hall, 15 B. Mon. Ky. 411; Mitchell v. Home Ins. Co., 32 Iowa 431; German Fire Ins. Co. v. Thompson, 43 Karr; 567 Ins. Law Jour. 884; Pac. Dep. 608.

LESSOR: One having an interest in rents, either as owner, lessee or sub-lessee, has insurable interest.

Franklin Ins. Co. v. Drake, 2 B. Monroe Ky. 45; Bennett Fire Ins. Cases 98 and 490; Ins. Law Jour. 823; Ins. Cent. Dig. 358; Dec. Dig. 173.

LESSEE: Has an insurable interest as sub-lessee or in the buildings which he may erect or in the improvements made by him.

7 Ins. Law 188-449; Fowle et al. v. Springfield s. Jud. C. Mass. 112 Mass.; Phila. Tool Co. v. Ins. Co., 132 Pa. St. 236, 19 Atl. 77; Hand v. Ins. Co., 57 N. Y. 41; Lawrence v. St. Marks Ins. Co., 43 Barb. 479; Niblo v. North America, 1 Sandf. 551; Imperial Ins. Co. v. Murray, 73 Pa. St. 12.

Where the party buys a lease from a lessee and pays a bonus for the same, he has an insurable interest. The loss would be figured as follows: If \$10,000 was paid Jan. 1, 1909, and lease had five years to run and fire occurred Jan. 1, 1911, then loss would be three-fifths of 10,000, or \$6,000. It must be determined that the amount paid was for the lease, over and above the yearly rental and not for good will.

LEASEHOLD: Where a building is erected on leased ground by the lessee and he agrees with the lessor to leave the building in good condition at the expiration of the lease, the company is liable for the loss.

Insurance covering the difference between the amount the lessee pays and the amount he claims he would have to pay in case of the termination of his lease should clearly define the contract and contain a clause allowing the deduction of a stipulated sum each month.

There is no way of determining beyond question of doubt, the actual loss to the insured and any interest which is subject to doubt is rarely acceptable.

In the recent case of Getchell v. Ins. Co. the court held that the value of the unexpired time is the measure of loss. The difference between the reasonable rental value and the rental cost to insured.

(Maine) 41 Ins. L. J. 1,482.

LAUNDRYMAN: See Bailee.

LEGATEE: See Devisee.

LIFE INTEREST: See Tenant for Life.

LEASEHOLD: See Lessee.

MORTGAGOR: May insure property with loss payable to Mortgagee.

Cent. Dig. 148; Dec. Dig. 115; 2 Joyce 1,028-1,029.

MORTGAGEE: May insure property in his name as Mortgagee to the full value of the debt. All policies should be made in the name of the Land Owner with loss, if any, payable to Mortgagee in order to prevent double insurance and misunderstandings.

2 Peters U. S. 25; 1 Adm. Mass. 311; 3 id 362; 8 Paige Ch. 436 Civil Code Cal. 2,541; Bergan v. Builders Ins. Co., 28 Cal. 541; Parks v. Hartford, 100 Mo. 373, 12 S. W. 1,058; 19 Ins. L. J. 364, Buch v. Phoenix, 76 Me. 586, 14

Ins. L. J. 412; *Mix v. Andes Ins. Co.*, 9 Hun. 397; *Davis v. Quincy Ins. Co.*, 10 Allen 113; *Kellar v. Merchants*, 7 La. Ann. 29;

MORTGAGEE CLAUSE: Placing a Mortgagee Clause on the policy makes a new contract as far as the Mortgagee is concerned.

Civil Code Cal. 2,542.

MERCHANDISE BOUGHT UNDER CONTRACT: Purchaser has an insurable interest to the amount he has paid on contract.

Michael v. St. Louis Mut. Fire Ins. Co., 17 Mo. App. 23 *Davis v. Phoenix Ins. Co.*, 111 Cal. 409.

MECHANICS LIEN: A party furnishing labor or material for the construction of a building, has an insurable interest to the value of such labor or material.

12 Iowa 271; 19 id 364; 15 B. Monroe Ky. 411; 14 Md. 285.

PLEDGOR OR PAWNER: Has the right to insure property so long as the right of redemption remains.

Civ. Code L. C. 2,016; 1 Stock, N. J. 667; 15 Mass. 389-534.

PARTNER: Has an insurable interest in the entire stock or property of the firm or company. His interest should not be insured separately without stating what that interest is.

15 Wend. N. Y. 187; 2 Duer Ins. 22-24; 2 Caines N. Y. 203.

PLEDGE: Has an insurable interest to the amount of his advances.

16 N. Y. 397; 15 Mass. 389-534; Denio N. Y. 227.

PROPERTY (Real) PURCHASED ON THE INSTALLMENT PLAN: Purchaser has an insurable interest to the amount he has paid on the contract.

Civ. Code Cal. 2,587; *Davis v. Phoenix Ins. Co.* 111 Cal. 409. See Real Property.

PROPERTY HELD ON STORAGE AS FOR REPAIRS: See Bailee.

PROFITS: May be insured as such. They are not insured unless specifically mentioned.

Niblo v. Insurance Co. of North America 1 Sandf. 551.

REMAINDERMAN: Has an insurable interest.

Redfield v. Holland Purchase Co. 56 N. Y. 354; 15 Am. Dec. 424; *Kearney v. Kearney* 17, N. J. Cq. 505 *Fireman's*.

RECEIVER: May insure property in his name as Receiver for the benefit of creditors.

1 Johns Ch. N. Y. 57; 2 Duer. N. Y. 652.

REAL PROPERTY PURCHASED UNDER CONTRACT: Purchaser has an insurable interest to the amount he has paid on contract:

Civ. Code Cal. 2,587; *Davis v. Phoenix Ins. Co.*, 111 Cal. 409; *Gorsch v. Phoenix Ins. Co.*, Ins. Law Jour. 1,320 *Brighton Beach Racing Ass'n v. Home Ins.*

Co., 113 App. Div. 728, 99 N. Y., Supp. 219; *Watts v. Phoenix Ins. Co.* Ins. Law Jour. 1,329. *Dunphy v. Commercial Union Assurance Co.*, 41 Ins. L. J. 441; *Adams v. North America Ins. Co.* 41 Ins. L. J. 473; also see *Vendor and Vendee*.

RENTS: See *Lessor and Lessee*.

SHERIFF: May insure property entrusted to his care as trustee.

26 N. Y. 117; Civil Code L. C. 1,485. *Ins. Co. v. Chase U. S.* 5 Wall. 509; *People v. L. & L. & G. Ins. Co.* 2 T. & C. 268;

STOCKHOLDER: May insure the corporate property to the extent of his stockholder's interest only.

20 Ohio 174; *Joyce* 2,935; *Aetna v. Kennedy Ins.* Law form 1,019 Ins. Cen't. Dig. 151; Dec. Dig. 115. *Crawford v. Ins. Co.* 100 Ill. App. 454, 65 N. E. 134; *Riggs v. Commercial Ins. Co.* 125 N. Y. 7, 20 Ins. L. J. 107; *Seaman v. Ins. Co.* 18 Fed. Rep. 250, 14 Ins. L. J. 97; *Warren v. Davenport Ins. Co.* 31 Iowa 464;

TRUSTEE: May insure property in his name as trustee.

Civil Code Cal. 2,589 N. Y. Civ. Code 1,403; 1 *Philips Ins.* 219; 45 N. Y. 454; *Kent Comm.* 311-418; *Civ. Code. L. C.* 981a; See *Joyce* 2-832 for additional cases.

TENANT: May insure improvements made by him. See *Tenant Improvements* page 5. See *Lessee* pages 10 and 11.

TAILOR: Dyeing and Cleaning Establishments. See *Bailee*.

TENANT FOR LIFE: May insure property to the amount he would receive from same during his life.

2 *Grat. Va.* 408; 30 *Me.* 414; 3 *Ins. Law Jour.* 928; *Seaman v. Anchor Fire Ins. Co.* 128 N. W. (Iowa) 934, *Home Ins. Co. v. Field* 42 Ill. App. 392; 23 *Clei*; *Leg. News.* 122. *Schaeffer v. Anchor Ins. Co.* 110 N. W. (Febry. 1907) 470. See *Remainderman. Getchell v. Ins. Co.* 41 Ins. L. J. 1482;

VENDEE: Has the right to insure if liable for value of goods. Has right to insure real property but policy should be made in the name of *Vendor* stating that property is being purchased by *Vendee* under contract.

8 *Ins. Law Jour.* 134; 1 *Philips Ins.* 108-116, 16 *Ins. Law Jour.* 129; Civil Code Cal. 2,587; *Davis v. Phoenix Ins. Co.* 111 *Col.* 409; *Gorsch v. Phoenix Ins. Co.*, *Ins. Law Jour.* 1,320; *Brighton Beach Racing Ass'n v. Home Ins. Co.* 113 App. Div. 728, 99 N. Y. Supp. 219; *Watts v. Phoenix Ins. Co.*, *Ins. Law Jour.* 1,329. See *Joyce* 2-977 additional cases.

Has a right to insure real property for full value, where he is in possession.

Brooks v. Erie Ins. Co. 76 App. Div. 275, 78 N. Y. Supp. 748; *Tyler v. Aetna Ins. Co.* 16 *Wend.* 385, 12 *Wend.* 507; *McGivney v. Phoenix Ins. Co.* 1 *Wend.* 85; *Duprey v. Delaware Ins. Co.*, 63 *Fed. Rep.* 680, 24 *Ins. L. J.* 161; *Grange Mill Co. v. Western Assur. Co.* 118 *Ill.* 396, 16 *Ins. L. J.* 129;

Has a right to insure if liable for full value of personal property.

Has a right to insure personal property under conditional contract of sale.

Bohn v. Sawyer 169 Mass. 477, 48 N. E. Rep. 620; Redd v. Williamsburg City Ins. Co. 75 Me. 537; Holbrook v. Phoenix Ins. Co. 25 Minn. 229; Little v. St. Paul 123 Mass. 380;

Has a right in property transferred to defraud creditors.

Forrester v. Gill 11 Colo. App. 410, 53, Pac. Rep. 230;

VENDOR: Has an insurable interest before the delivery of goods, also has an insurable interest in real property for balance of contract price, but policy must show property being purchased under contract. Policy should be in both names.

16 Wend. N. Y. 385; 1 Philips Ins. 110 Joyce 2-963; Norcross v. Ins. Co. 17 Pa. St. 429; 55 Am. Dec. 571. Hamilton v. Ins. Co. 97 Mich. 535, 23 Ins. L. J. 339; Guitermann v. Ins. Co. 111 Mich. 626, 26 Ins. L. J. 727; Morrison v. Ins. Co. 18 Mo. 262; Hill v. Ins. Co., 59 Pa. St. 474; Wood v. Ins. Co., 46 N. Y. 421; Redfield v. Holland 56 N. Y. 354; Walsh v. Ins. Co., 127 Mass 383;

WAREHOUSEMEN: Has an insurable interest to the extent of freight and charges paid, advances made and for storage.

12 Johns N. Y. 232; 2 Wend. N. Y. 593; Civ. Code L. C. 5,545; 4 Ind. 368.

Liability for loss by fire. "No warehouseman or other person doing a general storage business is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation."

Civil Code Cal. 1,858e. He may insure property in his care, however, for the benefit of the owners, but the policy must so state.

"Sole and Unconditional Ownership"

REAL PROPERTY.

PROPER CONSTRUCTION OF CLAUSE: The words "Sole and unconditional ownership" are clear and plain as it is possible to make them. It would seem that but one construction could be placed upon them, i. e. that no one other than the insured had any interest, of any nature, in the property insured. Such however, is not always the construction placed upon the clause by the courts and the purpose of this paper is to give the various interpretations, that every safeguard may be given the insured as well as to the Insurance Company.

GENERAL RULE UPON WHICH COURT DECISIONS ARE BASED: The general rule upon which most court decisions are based is—that the one upon whom the loss would fall or the one who is responsible for the restoration of the property, either in like kind or money, is the sole and unconditional owner. Their construction of this simple rule is as varied as the sunset. They do agree, however, that when the agent had knowledge of the facts, the company is liable. An insured, under the above rule, need not have any monetary interest in the property insured. It is enough if he is responsible for its restoration.

INSURANCE COMPANIES POSITION: Insurance Companies do not, as a rule, stand upon or take advantage of technicalities in a policy when the loss is an honest one; but where the claim is fraudulent, we should be able to defeat it by standing squarely upon the conditions of the contract.

INSTALLMENT PLAN—RIGHTFUL OWNER: If a party having a small interest in a property, as is so often the case where it is being purchased on the installment plan, were allowed to insure and collect the full value in case of loss by fire, it would be the means of creating a moral hazard that must, inevitably, result in a very much increased loss ratio. It therefore becomes of vital importance to our business to know who are the rightful owners and whether the insured is the sole and unconditional owner, and is the one upon whom the entire loss would fall or if others are interested. Public safety forbids that conflagrations should be made profitable.

PROVISION IN POLICY: The provision in the policy contract, regarding ownership, is reasonable and just, and most courts hold that it is valid, and a fulfillment of the condition must be complied with; but their opinion as to what is a full compliance does not always agree with what we know to be the intention of the clause. It is a question that is more often left to the jury and their decision is based largely upon what the insured testifies to.

MORTGAGE OR TRUST DEED: Giving a mortgage or trust deed to secure a loan on real property is not a change of title that will avoid the policy. The owner or mortgagor of the real estate, can only dispose of the property subject to the mortgage and this of itself proves that his interest is not sole and unconditional. He can however, sell or convey his interest or equity without notice to or consent of the mortgagee. He can also place additional mortgages on the property.

NOT A CHANGE IN TITLE: In view of these facts, it is held that he has an interest or ownership which he can dispose of at will and it is construed to be "sole and unconditional." If the property mortgaged was the only security for the debt, it might be claimed, with some justice, that the company was liable for the equity of the insured only; but in addition to the mortgage, a note is given and this holds the mortgagor for the amount of the mortgage whether the property is worth it or not.

DEFICIENCY JUDGMENT: If the insurance in case of loss, does not satisfy the mortgage or the property is sold under foreclosure proceedings and does not sell for the required amount, the note is held for the deficiency, and a deficiency judgment is given by the court. For this reason a mortgagee who transfers the mortgage to a third party, has an insurable interest to protect his liability as endorser of the note.

POLICY DOES NOT PROHIBIT MORTGAGE: There is no clause in the policy which expressly prohibits a mortgage on real property so the courts hold that if we intended that a mortgage, without consent of the company, should void a policy, we would have made provision to that effect in the contract.

CHATTEL MORTGAGE: A chattel mortgage is different from an ordinary mortgage as the mortgagor is not permitted to dispose of or even remove the property mortgaged without the consent of the mortgagee. There is a provision in the policy strictly prohibiting a chattel mortgage and the courts hold that it is reasonable and valid and that notice to and consent of the company must be obtained or the policy is void. The decisions have, as a rule, been very fair to the companies on this clause, but some of the decisions are beyond comprehension. A chattel mortgage does increase the hazard as it indicates financial embarrassment of the insured and the good risk becomes a doubtful one.

CONDITIONS OF POLICY: The stipulations of the policy in reference to ownership and title read "This entire policy shall be void (b) if the interest of the insured be other than unconditional and sole ownership, (c) if the subject of insurance be a building on ground not owned by the insured in fee simple." How the courts can construe these clauses to cover anything but an absolute, unconditional and sole ownership in fee simple, I cannot understand; but they place other constructions upon them as you will see from the decisions which follow.

INTEREST NOT PROPERTY INSURED: It must be remembered that it is the interest of the insured in and not the property itself which is insured. The interest must be of such a nature that it can be computed, and capable of being damaged or destroyed. It may be either legal or equitable, absolute or contingent ownership; but it must be a valid one and capable of being proven. Most courts seem to reason that any equity the insured may have in the property is "sole and unconditional." This line of reasoning would be correct and equitable if we were not expected to pay more than the equity of the insured in the property at the time of the loss; but in many cases the court decided that where the insured had only paid a small amount on the contract, he was the sole and unconditional owner and the measure of loss and damage was the full value of the property.

DEED OF TRUST: The policy condition as to sole and unconditional ownership is construed to have reference only to the quality of the estate or interest, and a party may be an unconditional sole owner, notwithstanding the existence of

any kind of a lien or incumbrance, whether by mortgage, lease, or otherwise; so a trust deed does not necessarily prevent the insured from being sole owner.

- Coples v. Amer. Ins. Co. 60 Minn. 376, 24 Ins. L. J. 551;
Moorotock Ins. Co. v. Rodefer. 92 Wa. 747;
Cleavenger v. Franklin, 47 W. Va. 595;
Hartford v. Enoch, Ark. 77, S. W. 899;
Huff v. Jewitt, 20 Misc. 35, 44 N. Y. 311;
Hubbard v. Beck, 43 Md. 358;
Clay v. Beck, 43 Md. 358;
Freozeri v. Ins. Co., 30 Fed. Rep. 646;
Dooliver v. Ins. Co., 128 Mass. 315;
Judge v. Ins. Co., 132 Mass. 521, 11 Ins. L. J. 843;
Omaha Ins. Co. v. Thompson, 50 Neb. 580;
Boulware v. Ins. Co., 77 Mo. App. 639;
Light v. Ins. Co., 105 Tenn. 480;
Temple v. Western Ins. Co., 35 N. B. 171;
Hare v. Hedley, 52 N. J. Eq. 545;
Lancashire Ins. Co. v. Monroe, 101 Ky. 12;
Lyscoming Ins. Co. v. Haven, 95 U. S. 242, 7 Ins. L. J. 249;
Steinmeyer v. Steinmeyer, 64 S. C. 413;
McClelland v. Ins. Co., 107 La. 124;
Wolf v. Ins. Co., 115 Wis. 402;
Hawley v. Ins. Co., 102 Cal. 36, 23 Ins. L. J. 874;
Dumas v. Ins. Co., 122 App. D. C. 245;

WHEN INSURED HAS EXCLUSIVE USE: So long as the insured, under the claim of right, has the exclusive enjoyment of the property, without any assertion of right or interest by any other person, he is the sole and unconditional owner, notwithstanding his title to the real estate is defective.

- Miller v. Ins. Co., 19 Blatchf. 308, 7 Fed. Rep. 649;
Williams v. Ins. Co., 17 Fed. Rep. 63, 12 Ins. L. J. 374;

IF CONTRACT SHOWS INTENTION TO COVER OTHER INTERESTS: Where a written part of a contract of insurance, shows an intention to cover and protect other interests besides those specifically named in the policy, the condition regarding sole and unconditional ownership is waived.

- Hogan v. Ins. Co., 186 U. S. 423;
Mark v. Ins. Co., 24 Hun. 565, 91 N. Y. 663;

ACCEPTANCE OF POLICY: If an insured accepts a policy in his own name, without qualification or otherwise expressed, he affirms that his interest is sole and unconditional ownership, and no other person has any interest in it. If it is not true the policy is void.

- Phoenix v. Ammasaut, 63 Ark. 187, 37 S. W. 959;
Ins. Co. v. Bohn, 65 Fed. Rep. 165, 24 Ins. L. J. 408;
Lasher v. Ins. Co., 86 N. Y. 423;
Mers. v. Ins. Co., 68 Mo. App. 127;
Overton v. Ins. Co., 79 Mo. App. 1;

ASSIGNMENT OF POLICY BEFORE LOSS: The written consent of a company to an assignment must be obtained before a loss or the policy is void. It must be in writing and made a part of the policy. Consent by the company to the assignment makes a new contract with the assignee.

- Alkan v. Ins. Co., 53 Wis. 136, 11 Ins. L. J. 126;
Frels v. Ins. Co., 120 Wis. 590, 98 N. W. 522;
Carter v. Ins. Co., 12 Iowa 287;
Greene v. Ins. Co., 84, N. Y. 572;

ASSIGNMENT OF POLICY AFTER LOSS: The insured may assign the policy or any claim he may have against the insurance company without consent of the company, after a loss; but no more rights are given the assignee than were held by the assignor. The company waives no rights by the assignment for if the assignor had no claim, the assignee has none. The assignor or insured, must make the claim against the company and submit to examination under oath, if required. The assignee cannot do it.

- Johnson v. Phoenix, 39 Md. 233;
Burger v. Ins. Co., 71 Pa. St. 422;
Pupke v. Ins. Co., 17 Wis. 378;

WHAT IS SOLE OWNERSHIP: To be unconditional and sole ownership, the interest or ownership of the insured must be completely vested, not contingent or conditional, nor in common or jointly with others; but of such nature that the insured must alone sustain the entire loss if the property is destroyed and this is so whether the title is legal or equitable. This decision was rendered by the Supreme Court of Florida and is the nearest to being a correct definition of the clause of any I have seen.

- Phoenix v. Hilliard, 39 Ins. L. J. 1336;

HALF INTEREST: Where insured sells an half interest in the land upon which building stands, such sale is a change in interest of the insured and the policy is void.

- Watts v. Phoenix Ha. S. C. 39, Ins. L. J. 1329;
L. & L. & G. Ins. Co., v. Cochran, 29 Ins. L. J. 374;

INTEREST AND TITLE ARE SYNONYMOUS: The words interest and title are synonymous. The test is whether title has passed. Can the owner compel the party to purchase.

- Ark. F. Ins. Co. v. Wilson, et al., 29 Ins. L. J. 358;

CLAUSE REFERS TO REALTY: Where the policy covered building and its contents, the clause "Unconditional and sole ownership" referred to realty and not personal property.

Continental v. Gardner, 30 Ins. L. J. 1051;

FORFEITURE: Where insurer relies on a forfeiture, the burden is upon him to establish it.

Cent. Dig. 1645, 1669, *Dec. Dig.* 646;

Atlas v. Malone, 40 Ins. L. J. 1911;

LIFE TENANT: Where property was insured by Life Tenant the court held that she was the owner; but that the money must be used to replace or invested to give an income to the Life Tenant.

Couvis v. Ins. Co., 30 Ins. L. J. 828;

ESTATE: A policy on an estate is not avoided by the settlement of the estate and delivery of the property to the legatees. The legatees were the parties for whose benefit the insurance was effected.

Stone v. Ins. Co. v. Ins. Co., 29 Ins. L. J. 250;

CREDITORS: Where policy was assigned to Trustee for the benefit of the creditors, the policy is void.

Northern Ins. Co. v. Ins. Co., 30 Ins. L. J. 448;

Moore v. Ins. Co., 141 N. Y. 224;

POSSESSION AND CONTROL: Title in insured is presumed *prima facie* from his possession and control of the property.

Ther. B. San. Co. v. Royal, 41 Ins. L. J. 481;

CONVEYANCE TO DEFRAUD: The fact that the property has been conveyed in trust to defraud creditors did not effect the title of insured so as to defeat the policy.

Ins. Co. Tenn. v. Waller, 35 Ins. L. J. 830;

Hogadone v. Ins. Co., *Mich. S. C.* 32 Ins. L. J. 760;

TEMPORARY POSSESSION: A decree of divorce granting insured's wife temporary possession of the insured property subject to being required to vacate it upon remarriage or upon the subsequent order of court, did not divest insured of title thereto, or diminish his interest therein within the meaning of the policy.

Hix v. Sun et al., *Ark. S. C.* 39 Ins. L. J. 1064;

TAX DEED: A party holding a Tax Deed has an insurable interest to the amount of his tax lien only.

Wilson v. Germania, *Kan. C. A.* 40 Ins. L. J. 55;

WILL OR DESCENT: A change of title by will or descent does not avoid the policy.

Towle v. Ins. Co., *Me. S. C.* 40 Ins. L. J. 389;

TRANSFER WITHOUT CONSENT: A transfer of title without consent of the company voids the policy.

Melcher v. Ins. Co., M. E. S. C. 32 Ins. L. J. 871;

Queen v. Pendola, Ark. S. C. 39 Ins. L. J. 1176;

AS INTEREST MAY APPEAR: The conditions of a fire policy, issued to insured alone, when the property was owned by him and his wife, are waived by the words "As interest may appear."

Bakhaus v. Caledonian, Mary. C. A. 39 Ins. L. J. 1431;

ORAL CONTRACT: An oral contract is not enforceable unless all the essential elements have been agreed upon. Such as when the risk is to commence; the amount to be written; upon what it is to cover; the rate and premium; and the parties to the contract.

Ogle Lake Shingle Co. v. Nat. Lumber Ins. Co., Wash. S. C. 41 Ins. L. J. 1033;

PARTNERSHIP: Real Estate acquired for partnership with partnership means, and used in its business, gives the partnership an "insurable interest" to warrant a policy insuring it against loss by fire. An equitable title to real estate gives an insurable interest to warrant a policy in the name of its owner.

Scott, et al. v. Dixie, W. Va. S. C. 41 Ins. L. J. 1039;

PAROL GIFT: Where an insured takes possession of and makes valuable improvements to property obtained under a "parol gift" he is the sole and unconditional owner.

Mass. v. Ins. Co., Mich. S. C. 36 Ins. L. J. 600;

HOMESTEAD: A homestead, although the final proof has not been made, is held to be "sole and unconditional ownership".

Allen et al. v. Phoenix, Id., S. C. 36 Ins. L. J. 289;

IF TITLE NOT ABSOLUTE: If the title to the property is not absolute, the policy is void.

F. & M. Ins. Co. v. Hohn, Neb. S. C. 32 Ins. L. J. 1017;

POLICY VOID: If the policy shows the insured to be the sole and unconditional owner, and he is not, the policy is void.

Hebner v. Ins. Co., 157 Ill. 144;

Overton v. Ins. Co., 79 Mo. App. 1;

Barnard v. National, 27 Mo. App. 26;

Fire Assn., v. Calhoun, 28 Tex. Civ. App. 409;

Breedlove v. Ins. Co., 124 Cal. 164, 28 Ins. L. J. 447;

McCormick v. Orient, 86 Cal. 260;

Tyree v. Ins. Co. W. Va., 46 S. E. Rep. 706;

BANKRUPTCY: It has been held that the policy is not rendered void because a receiver in involuntary bankruptcy took possession of the premises, placed a

watchman in charge and took out insurance in his own name; the receiver taking charge of the property until the proceedings are dismissed, or a Trustee in bankruptcy is appointed under the Bankruptcy Act 1898;

Marcello v. Concordia, Pa. S. C. 41 Ins. L. J. 1163;

So. Pants Co. v. Ins. Co., No. C. S. C. 41 Ins. L. J. 1219;

VENDEE AND VENDOR: A Vendee in possession under contract to purchase is the "sole and unconditional owner" and the Vendor by making the contract caused a "change in title".

Brighton Beach R. Assn. v. Home 113 App. Div. 728, 99 N. Y. S. 219;

Gorsch v. Niagara, N. Y. S. C., 40 Ins. L. J. 1320;

McCullough v. Home Cal. S. C., 38 Ins. L. J. 1003;

Where a Vendee is in possession and exercising the right of ownership, he is the "sole and unconditional owner".

Penn Ins. Co. v. Hughes, 30 Ins. L. J. 821;

A purchaser of insured property cannot recover for loss unless the policy is assigned to him by the Company. The holder of a fire Insurance policy is not entitled to recover where he has parted with his interest in the property. Policy can be assigned before a loss but with the consent of the company only.

Davis v. Ins. Co., Iowa S. C. 41 Ins. L. J. 969;

Bartling v. Ins. Co. Iowa S. C., 41 Ins. L. J. 974;

A Vendee under a conditional sale is liable for loss or damage by fire, his insurable interest is not merely the amount paid on the contract, but for the full value.

Ryan v. Agricultural, Mass. S. C. 34 Ins. L. J. 472;

The Vendor has an insurable interest for the balance of the purchase price.

Continental v. Brooks, 31 Ins. L. J. 348;

Id. 83a Am. & Eng. Enc. Law 313-315;

Where Vendor has transferred his legal title, he cannot recover.

Bartling v. Ins. Co., Iowa S. C. 41 Ins. L. J. 974;

ESCROW: Where Vendor has agreed to sell and papers are in escrow and the property burns before the conditions of the escrow are completed, it is not a change of title.

Pomeroy v. Aetna, Kan. S. C. 41 Ins. L. J. 465;

Swank v. Ins. Co., Iowa S. C. 34 Ins. L. J. 367;

DEED: The execution and delivery of a bond for a deed was not a transfer of title.

Phoenix v. Caldwell, 30 Ins. L. J. 116;

Contra.

Adams v. Ins. Co., Mass. S. C. 41 Ins. L. J. 473;

Where insured gives a deed of assignment, altho' he is left in possession of the property, the policy is void.

Ohio Farmers Ins. Co. v. Waters, 31 Ins. L. J. 71;

A deed not delivered until after Grantor's death, is not a change of title within the meaning of the policy.

Schaeffner v. Anchor Ins. Co., 31 Ins. L. J. 245;

A conveyance of the property altho' there was no consideration, voids the policy.

Home Ins. Co. v. Collins, 30 Ins. L. J. 435;

Ins. Co. v. Jansen, 56 Neb. 284;

McCrea v. Purment, 16 Wend. 460;

Morse v. Shattuck, 4 N. H. 229;

Kendrick v. Ins. Co., 124 N. C. 315;

Beach v. Crosby, Minn. S. C.

One in possession under a conveyance of title in fee simple, is the "Sole and unconditional owner", altho' there was a Vendor's lien.

North Amer. v. Pitts. Miss. S. C., 38 Ins. L. J. 805;

Where a deed is given to secure a debt it must be considered in the nature of a mortgage and it is not a change of title within the meaning of the policy.

Athens v. Evans, Ga. S. C. 40 Ins. L. J. 1931;

Sun Fire v. Clark, 53 Ohio St. 414; 42 N. E. Rep. 24, 25 Ins. L. J. 333;

German Ins. Co. v. Gibe, 162 Ill. 251, 44 N. E. Rep. 490;

Where insured gave a deed, absolute on its face, although insured claimed it was given to secure a mortgage, the policy is void. It is a change of title.

Watson v. Ins. Co., N. C. S. C. 75, So. E. 1105;

MORTGAGE: The acquisition of the legal title to the property by the mortgagee is not such a change of ownership as will void policy.

Fort Scott Bldg. & Loan v. Palatine, Kan. S. C. 15 Ins. L. J. 919;

Dodge v. Ins. Co., Kan. App. 415;

Ins. Co. v. Ward, 50 Kan. 346;

Ins. Co. v. Boardman, 58 Kan. 339;

Most courts hold that where the mortgagor sells the property to the mortgagee or where the mortgagee acquires title no matter how it is accomplished, it is a change of title and if the policy is not transferred it is void. This is good law and follows the intentions and conditions of the policy.

Boston Co-op. Bk. v. Ins. Co., Mass S. C. 39 Ins. L. J. 599;

Atlas Reduction Co. v. New Zealand, 34 Ins. L. J. 805;

Where the insured or mortgagor sold the property without the consent of the insurer, the policy is void except as to the mortgagee for an amount necessary to protect the mortgage.

Flint et al. v. Westchester, Mass. S. C. 40 Ins. L. J. 509;

A mortgage on real property does not change the title. The mortgagor is still the sole and unconditional owner.

Wolf v. Ins. Co., Wis. S. C. 32 Ins. L. J. 139;

AGENT: The following citations refer only to cases where the agent had knowledge of the conditions of the title and did not inform the company.

If the agent issues a policy knowing the insured is Trustee and not owner, the clause in reference to "Sole and unconditional ownership" is waived.

Keane v. Ins. Co., 40 Ins. L. J. 993;

Where agent knew insured held title under bond; that insured's interest was a homestead entry; that building was on leased ground or a Railroad right of way; that insured was an Executor and not owner; that foreclosure proceedings had been commenced; that personal property was mortgaged; and that insured had sold the property under contract, the conditions of the policy as to ownership were waived.

Clapp v. Ins. Co., 29 Ins. L. J. 468;

Queen Ins. Co. v. Taylor, 40 Ins. L. J. 1914;

Farley v. Ins. Co., Wis. S. C. 41 Ins. L. J. 972;

Shawnee v. Chapman et al., Tex. C. C. A. 40 Ins. L. J. 366;

Knowledge of agent before policy is written, is knowledge of the company.

Dupuy v. Delaware, 63 Fed. R. 680, 24 Ins. L. J. 161;

Home Ins. Co. v. Mendenhall, 164 Ill. 458, 45 N. E. Rep. 569;

Wagner v. Westchester, 92 Tex. 549, 50 S. W. R. 569;

Mers v. Franklin, 68 Mo. 127, 8 Ins. L. J. 505;

Emery v. Ins. Co., 52 Me. 322;

Leach v. Republic Ins. Co., 58 N. H. 245;

Peck v. Ins. Co., 22 Conn. 575;

Ayers v. Home Ins. Co., 21 Iowa 185;

Gates v. Penn Ins. Co., 10 Hun. 489 (N. Y.);

Wheeler v. Traders, 62 N. H. 326, 450;

Cal. Ins. Co. v. Union Comp. Co., 133 U. S. 387, 19 Ins. L. J. 385;

Dietz v. Prov. Wash., 31 W. Va. 851, 8 S. E. R. 616;

German Ins. Co. v. Miller, 39 Ill. App. 633;

Brown v. Ins. Co., 86 Ala. 189, 5 So. 500;

Williamson v. Ins. Co., 84 Ala. 106;

Pope v. Ins. Co., 31 Ins. L. J. 337;

Ins. Co. v. Copeland, 86 Ala. 551;

Ins. Co. v. Norton, 96 U. S. 234;

Strause v. Ins. Co., 30 Ins. L. J. 553;

Phoenix v. Ceaphus, Okl. S. C. 41 Ins. L. J. 485;

Gorsch v. Ins. Co., N. Y. S. C. 41 Ins. L. J. 129;

Athens v. Ledford, D. S. C. 39 Ins. L. J. 1084;

Stotlar v. Ins. Co., N. D. S. C. 41 Ins. L. J. 1361;

Vir. Ins. Co. v. Richmond Mica Co. Vir. S. C. 33 Ins. L. J. 361;

LEASED GROUND: Where the building was on leased ground the policy is void.

Wyandotte Brew. Co. v. Hartford, 38 Ins. L. J. 98;

A policy was issued covering upon building stock, office supplies, etc. No written or oral representation was made by the insured and no inquiries were made by the Company. After a loss occurred it was learned that the building stood upon leased ground. Held, that the provision with reference to ownership and title applied to the existing conditions and not future changes in title. The insured by accepting the policy in question, is charged with notice of its contents, and is bound by its conditions; the company, by issuing the policy without inquiry, did not waive the conditions as to title or ownership. It was incumbent upon the insured to disclose the nature of his title.

Millers & Mfg. Ins. Co. v. Parsons Rich & Co., Min. S. C. 35 Ins. L. J. 401;

McFarland v. St. Paul, 46 Minn. 519;

Collins v. St. Paul, 44 Minn. 440;

The insured had an interest in a building, though the building was owned by his mother, where he made improvements and was in possession under an oral agreement that he might have a store room therein, at a monthly rental, as long as his mother should live. The court held, "Where a leasehold interest is insured the value for the unexpired term is the measure of damage. The amount of the loss was properly ascertained by taking the present worth 60 days after proof of loss, of the aggregate amount representing the difference between the reasonable rental value and the rental cost to the insured during the mother's expectancy of life."

The above is the correct and equitable way of ascertaining a loss under a leasehold interest.

Getchell v. Ins. Co., Me. S. C. 41 Ins. L. J. 1482;

Cent Dig. 1280, 1281; Dec. Dig. 503;

PARTNERSHIP: Where a new partner is taken into the firm, it is a change of interest and voids the policy.

Germania v. Home, 144 N. Y. 195, 24 Ins. L. J. 382;

Card v. Phoenix, 4 Mo. App. 424;

Malley v. Ins. Co., 51 Conn. 222, 13 Ins. L. J. 38;

Royal v. Martin, 192 U. S. 149, 24 Sup. St. 247;

Where a third party acquires an interest in the profits only, it is not a change of title.

Hanover v. Lewis, 28 Fla. 209, 21 Ins. L. J. 316;

CONTRACT TO PURCHASE: A mere option contract for sale, under which nothing is done before a loss, is not a change of title. *

House v. Ins. Co., Iowa S. C. 39 Ins. L. J. 875;

A written agreement to sell and convey the property in fee to tenant who was in possession, upon the payment of the stipulated price (a portion of which was then paid) it was held that such acts caused a change in interest, title and possession of the subject of insurance sufficient to avoid the policy. Although the Vendors thereafter still retained the legal title to the land, they held it as trustees for the Vendee, who became the owner in equity.

Graunauer et al. v. West Ins. Co., N. J. C. A. 35 Ins. L. J. 197;

The execution of a Contract to sell is a change of title and avoids policy.

Gorsch v. Ins. Co., N. Y. S. C. 39 Ins. L. J. 1320;

A purchaser under a contract to purchase is the unconditional and sole owner within a fire policy, though the purchase money has not been paid in full.

Conn. Ins. Co. v. Colorado L. M. & M. Co., Col. S. C. 40 Ins. L. J. 1716;

Matthews v. Ins. Co., Wis. S. C. 31 Ins. L. J. 1065;

Barn v. Home, Iowa S. C. 32 Ins. L. J. 737;

Where the owner of buildings, states in his application, that he has an interest in land under a contract for a deed, he can recover, the insurer being estopped to assert invalidity of the policy.

Coats v. Ins. Co., Wis. S. C. 41 Ins. L. J. 1053;

Where the Executor of an estate made a contract of sale which provided for the assignment of the policy and delivery of possession of the property to the vendee at a future date upon payment of the purchase price, held, title had not passed and Company was liable.

Zeitler v. Concordia, Mich. S. C. 41 Ins. L. J. 1061;

A contract of sale transferring possession and agreeing to convey title, voids the policy as it is a change of ownership.

Vancouver Nat. Bank v. Ins. Co., U. S. C. C. 37 Ins. L. J. 27;

Zenor v. Hayes, Ill. S. C. 37 Ins. L. J. 142;

Ex Foundry Co. v. Western, Mich. S. C. 33 Ins. L. J. 1016;

WHEN THE INSURED IS NOT SOLE AND UNCONDITIONAL OWNER: An undivided part interest (1) or an interest held jointly with some one else, is not sole and unconditional ownership, (2) nor is the interest of a mortgagee such an ownership (3); a conditional gift (4); or the interest of one partner in the firm property is not sole ownership (5); the interest of a purchaser of property at a Judicial sale, which had not been confirmed by the court, is not unconditional ownership (6); the individual interest of a stockholder in the property owned by the corporation, is not sole and unconditional (7); a deed which in reality is intended as security for a debt, does not convey title (8); though it may be

otherwise as to a bill of sale (9); The ownership of property sold on judgment or execution, where the time for redemption has not expired, is not sole and unconditional (10); A life interest is not sole and unconditional ownership (11); a surviving partner is not the sole owner of the partnership property (12).

- 1—Hebner v. Palatine, 157 Ill. 144, 41 N. E. Rep. 627;
Palatine v. Dickenson, 116 Ga. 794, 43 S. E. Rep. 52;
Sish v. Citizens, 16 Ind. App. 565, 45 N. E. Rep. 26 Ins. L. J. 369;
Springfield v. Green, 36 S. W. Rep. 143;
Miller v. Ins. Co., 46 Mich. 463, 10 Ins. L. J. 581;
L. L. & G. v. Cochrane, 77 Miss. 348;
Bradley v. Ins. Co., 90 Mo. App. 369;
Ger. Amer. v. Parl, 53 S. W. Rep. 442;
Fire Assn. v. Calhoun, 28 Tex. Civ. App. 409;
Adewa v. Ins. Co., 36 La. Ann. 660;
Noyes v. Hartford, 54 N. Y. 668;
Columbian Ins. Co. v. Lawrence 2 Pet. 25;
- 2—Schwedel v. Humboldt, 158 Pa. St. 459, 23 Ins. L. J. 240;
- 3—Ardway v. Chace, 57 N. J. Eq. 478;
- 4—Dwg. Hse. Ins. Co. v. Dowdall, 49 Ill. App. 33;
- 5—McFetridge v. Phoenix, 84 Wis. 200, 54 N. W. Rep. 326, 22 Ins. L. J. 211;
- 6—Hartford v. Heating, 86 Md. 130, 38 Atl. Rep. 29, 27 Ins. L. J. 406;
- 7—Ins. Co. v. Bohn, 65 Fed. Rep. 165 24 Ins. L. J. 408;
McCormick v. Ins. Co., 66 Cal. 361, 14 Ins. L. J. 373;
- 8—Williamson v. Orient, 100 Ga. 791;
Alberts v. Ins. Co., 117 Ga. 854, 45 S. E. R. 282;
- 9—Kronk v. Ins. Co., 91 Pa. St. 300;
Cook v. Lion, 67 Cal. 368, 14 Ins. L. J. 863;
- 10—Reaper City Ins. Co. v. Brennan, 58 Ill. 158;
- 11—Garver v. Ins. Co., 69 Iowa 202;
Davis v. State, 67 Iowa 494, 15 Ins. L. J. 533;
Collins v. St. Paul, 44 Minn. 440, 20 Ins. L. J. 179;
- 12—Crescent Ins. Co. v. Camp, 71 Tex. 503;

CONCLUSION: From the decisions just read we must conclude that a mortgage on real estate; a trust deed to secure a debt; a transfer to defraud creditors; a contract to sell, but not completed; a change of title by will or descent, is not a change of title or ownership which will avoid the policy.

That a vendee in possession, under contract to purchase is a sole and unconditional owner.

It is therefore necessary for us to protect the rights of our Companies by so

wording our policies that we will not be called upon to pay a loss to a party not properly entitled to it.

I would therefore suggest that all policies covering property which is mortgaged, be made payable to the mortgagee; that where property is being purchased under a contract for a deed or on the installment plan, that both the Grantor and the Grantee be made the insured; that where a building is on leased ground and the building reverts to the land owner at the expiration of the lease that both the Lessor and Lessee be made the insured. That an inspection should be made of every risk which is encumbered by mortgage, bought under contract or upon leased ground in order that the interest of all parties may be known to the Company, and the value of the property established. The reason for this conclusion is that the first clause of the policy conditions reads "The Company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of loss or damage". If the insured is not bound to fulfill the contract or the actual title has not passed, the Company would only be liable for the amount the insured had paid on the contract as that is all he could lose. This is true of personal or real property so to properly protect the interests of all parties concerned, the policy should be made in all their names.

Where the loss is honest and no effort has been made to deceive the Company, we should do by the claimant as we would like to be done by. If the insured has insured the property in good faith, believing all interests were properly covered, and if the Company would have accepted the risk under the conditions as they really existed, then it is better for the Company to reform its policy and pay the insured what is equitably due him, than to have the court do so. It is only when the claim is dishonest that we should take advantage of every technicality, and to be able to see them when they really exist, we should keep thoroughly posted as to all the late court decisions. Insurance Law is a most interesting study and will repay anyone who follows it closely.

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